

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGINALD AUSTIN,)	No. C 06-4088 RMW (PR)
)	
Petitioner,)	ORDER DENYING
)	RESPONDENT'S MOTION
vs.)	TO DISMISS; FURTHER
)	SCHEDULING ORDER
)	
A.P. KANE, Warden,)	
)	
Respondent.)	
_____)	(Docket No. 10)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms' ("Board's") denial of parole. The court ordered respondent to show cause why the petition should not be granted. Respondent has filed a motion to dismiss the petition and petitioner has filed opposition. Respondent filed a reply and petitioner filed a response to the reply. Having reviewed the papers, the court DENIES respondent's motion to dismiss and issues a further scheduling order as set forth below.

BACKGROUND

In 1980, petitioner was sentenced to fifteen years-to-life in prison after his conviction in Sacramento Superior Court for second degree murder (Cal. Penal Code § 190). Petitioner has received six parole hearings, and he challenges the Board's

1 continued denial of parole at these hearings. Petitioner filed a state habeas petition in the
2 state superior court which was denied on November 1, 2004. Petitioner filed a habeas
3 petition with the state appellate court which was denied on January 26, 2005. Petitioner
4 then filed a habeas petition in the state supreme court which was denied on March 22,
5 2006. Petitioner filed the instant petition on June 30, 2006.

6 DISCUSSION

7 Respondent moves to dismiss the petition on the grounds that the allegations in the
8 petition do not establish standing, and are too vague to state a cognizable claim for relief.
9 Respondent asserts that petitioner lacks standing and that his allegations are too vague
10 because he has failed to identify the specific parole hearing at which the Board violated
11 his rights. In order to establish standing under Article III of the United States
12 Constitution, petitioner "must allege personal injury traceable to the defendant's allegedly
13 unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468
14 U.S. 737, 751 (1984). Moreover, a petition is subject to dismissal for vagueness if the
15 petitioner fails to allege specific facts that show a federal claim is presented. Jones v.
16 Gomez, 66 F.3d 1999, 204-05 (9th Cir. 1995).

17 In the Order to Show Cause, the court found that petitioner had asserted the
18 following two claims for relief: (1) that the Board violated his due process protections
19 and guarantees under clearly established federal law through parole denials by continually
20 denying parole based upon the commitment offense; and (2) the Board's continued denial
21 of parole violates petitioner's plea agreement contract that he entered into and that this
22 contract is enforceable under both state and federal law. Respondent asserts that
23 petitioner's allegations that the Board "continually denied" his rights fails to establish
24 standing and are too vague because respondent cannot discern when or at what hearing
25 petitioner's rights were violated. Federal courts have a duty to construe pro se petitions
26 for writs of habeas corpus liberally, however, Zichko v. Idaho, 247 F.3d 1015, 1020 (9th
27 Cir. 2001), and when liberally construed, petitioner's allegations do sufficiently identify
28 the parole hearings at which he claims the Board violated his rights.

1 2. Respondent shall file with the court and serve on petitioner, within **sixty**
2 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
4 not be granted. Respondent shall file with the answer and serve on petitioner a copy of all
5 portions of the underlying prison disciplinary record that have been transcribed previously
6 and that are relevant to a determination of the issues presented by the petition.

7 3. If petitioner wishes to respond to the answer, he shall do so by filing a
8 traverse with the court and serving it on respondent within **thirty days** of his receipt of
9 the answer.

10 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded
11 that all communications with the court must be served on respondent by mailing a true
12 copy of the document to respondent's counsel. Petitioner must keep the court and all
13 parties informed of any change of address by filing a separate paper captioned "Notice of
14 Change of Address." He must comply with the court's orders in a timely fashion.
15 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
16 to Federal Rule of Civil Procedure 41(b).

17 This order terminates Docket No. 10.

18 IT IS SO ORDERED.

19 DATED: 3/28/08


RONALD M. WHYTE
United States District Judge